

**COVID-19 AND EMPLOYMENT LAW:
WHERE WE ARE NOW**

**HEALTH DIRECTORS LEGAL CONFERENCE
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1

THE EEOC, THE ADA, AND THE PANDEMIC

An employer may:

- Take employee temperatures
- Ask about symptoms
- Ask about vaccination

2

AN EMPLOYER MAY ALSO ASK:

1. Questions about contact with persons who have tested positive for COVID-19
2. Questions about participating in mass gatherings
3. Questions about travel

3

EMPLOYEES WHO TEST POSITIVE

- May be excluded from the workplace!
- May qualify for up to 80 hours of emergency paid sick leave
- Disclosure to local health department permitted by ADA
- Disclosure of name of infected employee to the public and to other employees not permitted.

4

RETURN TO WORK: COVID-19 + SYMPTOMS

- 24 hours with no fever (and no fever-reducing meds) **and**
- Symptoms have improved **and**
- Ten days have passed since symptoms first appeared
- Retesting if health care provider advises.

5

RETURN TO WORK: ASYMPTOMATIC COVID-19

- Ten days have passed since the positive COVID-19 test and no symptoms have appeared

6

WHAT DOES EXPOSURE MEAN?

- Being within 6 feet of someone with COVID-19 for a total of 15 minutes or more
- Providing care at home to someone with COVID-19
- Direct physical contact
- Sharing eating or drinking utensils
- Person with COVID-19 sneezed, coughed, or somehow got respiratory droplets on the employee

7

WHAT SHOULD AN EXPOSED EMPLOYEE DO?

Self-quarantine for 14 days unless

- Fully vaccinated, or
- Positive test within last three months

8

CDC EXCEPTION FOR CRITICAL INFRASTRUCTURE WORKERS

Critical infrastructure workers who have had an exposure to COVID-19 but are asymptomatic may continue to work with additional safety precautions:

1. Taking the employee's temperature;
2. Checking for symptoms of COVID-19 before each work shift;
3. Asking the employee to self-monitor for symptoms during their work shift;
4. Requiring the employee to wear a cloth face mask.
5. Disinfecting the workspace and any shared tools.

9

WHO IS A CRITICAL INFRASTRUCTURE WORKER?

- Human services workers & staff
- Public safety workers & staff
- All utilities employees
- County engineers
- Water and wastewater staff
- Transit workers and dispatchers
- Public works employees
- All IT staff
- Facilities staff
- Mechanics
- RoD and employees
- Finance
- Planning, zoning and permitting
- Purchasing and procurement

10

THE AMERICAN RESCUE PLAN ACT (ARPA)

Allows employers voluntarily to expand and extend FFCRA leave through September 30.

1. Emergency Paid Sick Leave (EPSL)
2. Emergency Family and Medical Leave Expansion (EFMLA)

11

ORIGINAL EMERGENCY PAID SICK LEAVE (EPSL)

1. The employee is subject to a federal, state or local **quarantine or isolation order** related to COVID-19;
2. The employee has been advised **by their healthcare provider to self-quarantine** because they are infected with or have been exposed to COVID-19 or because they are at high risk of complications from COVID-19;
3. The employee is showing symptoms of COVID-19 and is **seeking but has not yet received a medical diagnosis**;
4. The employee is caring for someone subject to a federal, state or local quarantine or isolation order related to COVID-19 or who has been advised by their healthcare provider to self-quarantine for COVID-19 related reasons; or
5. The employee is caring for their son or daughter because the child's school or childcare facility has been closed or the childcare provider is no longer available because of a COVID-19 related reason.

12



EXPANDED EPSL REASON # 3

3. The employee is showing symptoms of COVID-19 and is seeking but has not yet received a medical diagnosis, *the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 and such employee has been exposed to COVID-19 or the employee's employer has requested such test or diagnosis, or the employee is obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to such immunization.* (addition in red italics)

13

THREE COMMON QUESTIONS

1. Employee has been exposed to COVID-19 and we have advised him to quarantine at home. Is he eligible for EPSL under reason 2?
2. Employee says she has COVID-19 symptoms and has asked for EPSL. Does she qualify under reason 3?
3. Employee lives with a family member who is high-risk for COVID-19 complications. Is EPSL available for this reason? Would regular FMLA be available for this situation?

14

ORIGINAL EMERGENCY FAMILY AND MEDICAL LEAVE (EFMLA)

1. SCHOOL
2. CAMP
3. DAYCARE

15

EXPANDED EMERGENCY FMLA LEAVE (EFMLA)

Employees may take EFMLA leave for any of the same reasons for which they could take EPSL under the FFCRA, as well as for:

- the time during which an employee is waiting for the results of a COVID test because the employee was exposed to COVID-19 or because the employer has asked the employee to get tested,
- the time spent getting vaccinated against COVID-19; and
- any time when the employee cannot work due to side effects from a COVID-19 vaccination.

16

EXPANDED EMERGENCY FMLA LEAVE (EFMLA)

1. Employees may take up to twelve weeks of EFMLA leave between April 1, 2021 and September 30, 2021.
2. Employees are still limited to a total of twelve weeks of FMLA leave within a 12-month period for all reasons, including EFMLA COVID-related leave, combined.
3. Employees who have already used up their FMLA allotment for the year are not entitled to EFMLA leave. If an employee's FMLA year has reset since the expiration of the FFCRA, the employee is entitled to a full twelve weeks of FMLA, including EFMLA, during the twelve months following the start of the new FMLA year.

17

EMPLOYEE VACCINATION MAY BE MANDATORY

Exceptions for:

1. Medical contraindications (ADA)
2. Religious objections (Title VII)

18

THE IMMUNITY PASSPORT

- Employers may exclude employees who pose a direct threat to others from the workplace.
- Vaccination as a term and condition of employment.

19

EMPLOYEES WHO REFUSE TO WORK


1. Child care
2. Live with person who is high risk
3. Fear
4. Unemployment benefits pay more than employee's wages.

20

EXECUTIVE ORDER 151 JULY 17, 2020

- **State agencies**
 - All state employees to wear masks when within 6 feet of one another.
 - All customers of public-facing state offices to wear masks when they are inside the agency and may be within 6 feet of another person, unless the customer states that an exception applies.
 - All workers and riders on public transportation and at bus stops to wear masks when they are or may be within 6 feet of another person.
 - Exceptions on an honor system.
- **Local governments encouraged to do the same.**

21



MASKS AND INSUBORDINATION

- Employee refuses to wear mask.
- Employee refuses to see or treat or inspect patient who won't wear a mask.
- Employee refuses to inspect a place of business where employees and customers are not wearing masks.

22

**25 NCAC 011 .2304
DISMISSAL FOR UNACCEPTABLE PERSONAL CONDUCT**

(a) Employees may be dismissed for a current incident of unacceptable personal conduct without any prior active disciplinary actions. For unacceptable personal conduct, any level of discipline may be imposed without warning.

(b) Unacceptable personal conduct means:

(1) . . .

(8) insubordination that is the willful failure or refusal to carry out an order from an authorized supervisor . . .

23

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24
